

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

46000/1955
2013-0211

1. PARTIES

1.1. Parties

THIS AGREEMENT FOR HIGH-CAPACITY FIBER CIRCUIT SERVICES (this "**Agreement**") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("**City**"), a Texas home-rule city, and **AT&T Texas** ("**Contractor**"), a corporation doing business in Texas.

The Parties acknowledge and agree the rates, terms and conditions under this Agreement are available only to qualifying entities under Texas HB2128, and the Service(s) are offered under individual – case terms and conditions (including price).

Customer acknowledges and certifies that the interstate traffic (including Internet and international traffic) constitutes **ten percent (10%) or less** of the total traffic on any Service. If new services are included in this Agreement, Customer confirms receipt of the AT&T customer building / site preparation document describing the installation requirements at the Site(s).

This Agreement and Pricing Schedules affixed hereto expires upon the expiration of the Minimum Payment Period as further described below in this Agreement.

☐ If checked, the following statement does not apply: Customer confirms receipt of the AT&T customer building / site preparation document describing the installation requirements at the Site(s).

1.2. Address

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City
City Purchasing Agent
For Director of the Houston Public Library
PO Box 1562
Houston, TX 77251

Contractor
AT&T Corp
One AT&T Way
Bedminster, New Jersey 07921-0752

1.3 Parts Incorporated

The following exhibits are incorporated into this Agreement.

EXHIBITS

- A. Scope of Services
- B. Fee Schedules
- C. Maintenance Fee Payment Schedule

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- D. Equal Employment Opportunity Ordinance
- E. Drug Policy Compliance Agreement
- F. Drug Policy Compliance Declaration
- G. Contractor's Certification of No Safety Impact Positions in Performance of a City Contract
- H. Pay or Play

1.4 Controlling Parts

If a conflict among the Sections and Exhibits arises, the Sections control over the Exhibits.

1.5 Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original, as of the date of countersignature by the City Controller of the City of Houston.

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CONTRACTOR:
AT&T Corp

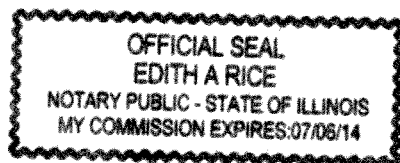
By: [Signature]
Name: GABRIELA RATULOWSKI
Title: Contract Management

3/8/2013

ATTEST/SEAL:

By: [Signature]
Corporate Secretary Notakey

Tax Identification



CITY:
THE CITY OF HOUSTON, TEXAS

By: [Signature]
Mayor Matthew S. Rapp

ATTEST/SEAL:

By: [Signature]
City Secretary

APPROVED:

[Signature]
City Purchasing Agent

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney
L.D. File No. _____

COUNTERSIGNED

[Signature]
City Controller Ch.B. Mc

DATE COUNTERSIGNED

3-11-13

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2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

- 2.1 “Agreement”** means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.2 “City”** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.3 “City RFP”** means City’s RFP No. S10-T24384.
- 2.4 “Contractor”** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.5 “Countersignature Date”** means the date shown as the date countersigned on the signature page of this Agreement.
- 2.6 “Department”** means the Administration & Regulatory Affairs (“ARA”) Department.
- 2.7 “Director”** means the City Purchasing Agent, or the person he or she designates or the HITS Director, or the person he or she designates.
- 2.8. “HITS Director”** means the City Director of Houston Information Technology Services, or the person he or she designates.
- 2.9. “Service Component”** means an individual component of a Service provided under this Agreement.
- 2.10. “Tariffs”** are documents containing terms and conditions for a service that AT&T is required to file with the State regulatory commission. Tariffs can be found at www.att.com/servicepublications, and are referred to as “Service Publications” in this Agreement. Service Publications may be modified by AT&T from time-to-time, and notice for such changes shall be by the posting of the modified Service Publication on AT&T’s website unless otherwise required by the State’s regulatory rules and requirements.
- 2.11. “Minimum Payment Period”** as defined in Section 4.8 below.

3. DUTIES OF CONTRACTOR

3.1 Scope of Services - Services in General

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit A.

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3.2 Coordinate Performance

Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3 Reports

Contractor shall submit all reports and progress updates required by the Director and any network management reports including but not limited to: i) bandwidth utilization by circuit reports; and ii) any reports that show bandwidth utilization abnormalities or outages.

3.4 Prompt Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.** Contractor shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

3.5 INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.5.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.5.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED, ON A PER CLAIM OR AGGREGATE BASIS DURING ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES INCURRED BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE CLAIM AROSE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S NEGLIGENCE.

3.6 INDEMNIFICATION – PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT

CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL

REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY THIRD PARTY, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER 1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, 2) IF IT IS IMPOSSIBLE FOR CONTRACTOR TO OBTAIN SUCH RIGHT FOR CITY TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS THE CONTRACTOR SHALL, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CITY SHALL NOT BE LIABLE FOR EARLY TERMINATION FEES.

3.7 INDEMNIFICATION – SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.8 INDEMNIFICATION – PROCEDURES

3.8.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

1. a description of the indemnification event in reasonable detail,
2. the basis on which indemnification may be due, and
3. the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.8.2 Defense of Claims

1. **Assumption of Defense.** Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not

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assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.9 Insurance

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All required policies except Professional Liability and Worker's Compensation must include the City as an additional insured with respect to work performed under this Agreement. (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

- (1) Commercial General Liability insurance including Contractual Liability insurance:
 - \$500,000 per occurrence; \$1,000,000 aggregate
- (2) Worker's Compensation including Broad Form All States endorsement:
 - Statutory amount
- (3) Professional Liability
 - \$1,000,000 per claim or wrongful act; \$1,000,000 aggregate
- (4) Automobile Liability insurance
 - \$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED AND NOT REPLACED.** Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may

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- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

3.10 Warranties

3.10.1 Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

3.10.2 Contractor warrants that the circuits it provides under this Agreement shall perform in accordance with the products documentation and shall meet the service levels set out in Exhibit A.

3.10.3 Contractor agrees to assign all manufacturers' warranties for any equipment supplied as part of the services to be provided under this Agreement and will deliver all related documentation to the Director within 5 days after execution of this Agreement.

3.11 Confidentiality – Protection of City's Interests

Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

3.12 Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

3.13 Compliance with Laws

Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

3.14 Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit C.

3.15 Drug Abuse Detection and Deterrence

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3.15.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

3.15.2 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

3.15.3 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.15.4 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

1. a copy of its drug-free workplace policy,
2. the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit D, together with a written designation of all safety impact positions and,
3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit F.

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit E. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

3.16 Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Contractor shall complete and submit to the Director Exhibit G, POP-2 Form prior to the execution of this Agreement.

4. DUTIES OF CITY

4.1 Payment Terms

1. The City shall pay and Contractor shall accept the applicable monthly fees for each location set out in Exhibit B (Fee Schedule).

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4.2 Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.3 Method of Payment

4.3.1 The City shall pay Contractor on the basis of monthly invoices submitted by Contractor and approved by the Director, showing the services performed and the corresponding fee. The City shall comply with the Texas Prompt Payment Act.

4.3.2 Billing and Payments AT&T will bill Customer for Services on a monthly basis. If the Service Order Type specified on Attachment 1 is "*Existing*", charges under this Agreement may commence on the date this Agreement is signed by the Customer but no later than the Effective Date of this Agreement; AT&T will advise Customer when this is the case. For a Service Order Type of "New", charges will commence on the date such Service is installed and available to Customer.

Customer is liable for payment of the charges applicable to the Services provided under this Agreement, and for the associated applicable taxes, regulatory surcharges, recovery fees and other similar fees. Payment is due within 30 days after the date of the AT&T invoice, and must refer to the invoice number and must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorney's fees. Unless the Customer is a Texas State agency or a political subdivision of the State in which case Customer shall comply with Chapter 2251 of the Texas Government Code regarding the payment of late payment charges, AT&T may charge late payment fees as specified in the applicable Tariff, at the rate specified therein.

AT&T may require Customer to tender a deposit any time that AT&T determines, in its reasonable judgment, that Customer is not creditworthy.

4.4 Method of Payment – Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.5 Limit of Appropriation

4.5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

4.5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$57,103.20 to pay money due under this Agreement (the "Original Allocation"). The City agrees that upon receiving approval of additional funding, it shall execute an amendment to this Agreement for any additional products and services that it

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desires to acquire from AT&T under this Agreement. The City is responsible for paying for all products and services ordered and received; therefore, it shall be responsible for ensuring that it does not order services that exceeds allocated funds. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement,. Therefore, the parties have agreed to the following procedures and remedies.

4.5.3. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, supplemental sums will be allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston.

4.5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. Subject to the Non-appropriation provision below, Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's remedy is suspension or termination of its performance under this Agreement, and to recover early termination fees if applicable.

4.5.5 Non-Appropriations of Funding

If Customer is a government agency dependent entirely on government funding, by executing this Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the applicable Minimum Payment Period. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under this Agreement, Customer may terminate the Services without liability for the Termination Charges set forth in section 5 (Termination) upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with AT&T to develop revised terms, an alternative payment schedule or a new agreement to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Services under this section. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Agreement under this section, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Minimum Payment Period for such Service(s).

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4.6 Changes

4.6.1 The City is responsible for paying for all products and services ordered and received.

4.6.2 ADDS; MOVES; UPGRADES; DOWNGRADES

4.6.2.1. Adds Services may be added to this Agreement by means of an amendment that shall include a separate price schedule with its own term.

4.6.2.2. Moves Moves of Service Components not permitted.

4.6.2.3. Upgrades Upgrades of Service Components not permitted.

4.6.2.4. Downgrades Downgrades of Service Components not permitted.

4.7 Access to Site

Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

4.8 Minimum Payment Period

For each Service provided under this Agreement, the commencement date for the Minimum Payment Period ("Term Start Date") is: (1) for any "New" Service identified in Exhibit A hereto, the Term Start Date shall be the date when such Service is installed and available for use by Customer; or; (2) for any "Existing" Service identified in Exhibit A hereto, the Term Start date is the Effective Date.

The Minimum Payment Period will continue as specified in Section 5.1 of this Agreement.

4.8.1 Prices; Prices Upon Expiration of Term

The rates and charges for each Service provided under this Agreement will not change during the Term, and shall apply in lieu of the rates and charges set forth in the applicable Service Publication for the Service. No other discount, promotion, credit or waiver set forth in any Service Publication will apply.

Upon the expiration of the applicable Minimum Payment Period, no rates or discounts provided under this Agreement will apply to the Service(s). For any Service provided under this Agreement, upon expiration of the applicable Minimum Payment Period, Customer will have the option to either (a) provide Notice to AT&T of Customer's desire to terminate the Service (see page 1 for Notice to AT&T information); or. (b) continue using the Service on a month-to-month basis pursuant to the then-current month-to-month rates, terms and conditions for the Service (such rates may be higher than those under the Agreement) until the Service is terminated by either party pursuant to Section 5 (Termination) of this Agreement. AT&T month-to-month rates are posted in the applicable Service Publication.

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Prices in this Agreement are exclusive of all current or future taxes, regulatory surcharges, recovery fees, and other similar charges specified or allowed by any governmental entity relating to the sale, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid exemption prior to the delivery of Services.

4.9 Customer's Cooperation

Customer will in a timely manner allow AT&T to access, or at Customer's expense obtain timely access for AT&T to, property (other than public property) and equipment reasonably required to provide the Services. Access includes information and the right to construct, install, repair, maintain, replace and remove access lines and network facilities, and use ancillary equipment space within the building, necessary for Customer's connection to AT&T's network. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way).

Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of any substance or material that poses an unreasonable risk to health, safety, or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. If AT&T encounters any such hazardous materials at a Customer location, AT&T may terminate the affected Service, or suspend performance until Customer removes the hazardous materials.

5. TERM AND TERMINATION

5.1 Contract Term

This Agreement and the HB2128 Pricing Schedules attached hereto and additional transaction specific documents (collectively, the "Agreement") shall apply to all services and equipment AT&T provides Customer pursuant to this Agreement ("Services") and shall continue in effect so long as Services are provided under the HB2128 Pricing Schedules:

This Agreement is effective on the Countersignature Date and remains in effect for thirty-six (36) months or until terminated under this Agreement (the "Initial Term").

5.2 Termination for Convenience by City

5.2.1 The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2.2 Termination Either Party may terminate any Service provided under this Agreement for convenience by providing its Notice of termination to the other Party at least 30 days' prior to its intended date of termination. Customer is liable for any charges incurred prior to its termination of such Service, including, but not limited to, any early termination charges, shortfall charges, usage charges and monthly recurring charges incurred prior to termination.

5.2.3 If Customer terminates a Service prior to the applicable Minimum Payment Period, Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third-party charges resulting from the termination.

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5.3 Termination for Cause

Either party may terminate its performance under this Agreement if the other party defaults and fails to cure the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after Contractor's receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The Director shall act on behalf of the City to notify Contractor of a default and to effect termination.

5.3.1 If Customer terminates Service(s), for convenience in whole or in part or AT&T terminates Service(s) for Customer's default prior to the expiration of the applicable Minimum Payment Period, Customer shall pay an early termination liability equal to (a) all unpaid non-recurring charges (excluding non-recurring charges that were waived or incorporated into the monthly recurring rates); and, (b) fifty percent (50%) of the recurring monthly charge rate for the terminated Service(s), multiplied by the number of months remaining in the Minimum Payment Period for the applicable Service at the point of termination; and, (c) any unpaid special construction liabilities. These charges shall become due and immediately payable upon termination.

6. MISCELLANEOUS

6.1 Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

6.2 Force Majeure

6.2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

6.2.2 This relief is not applicable unless the affected party does the following:

6.2.2.1 uses due diligence to remove the effects of the Force Majeure as quickly

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as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

6.2.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

6.2.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

6.2.5 If the Force Majeure continues for more than 10 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement.
CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

6.2.6 Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3 Severability

If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Governing Law section of this Agreement, applicable law mandates a different interpretation or result, the remaining provisions will remain in effect, and, the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties. Notwithstanding the foregoing, in the event the applicable law mandates a specific result, AT&T will provide notice to Customer of the required modification.

6.4 Entire Agreement

This Agreement and the Pricing Schedules referencing this Agreement attached hereto, merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

6.5 Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.5.1 Amendments and Waivers. Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

For Texas House Bill 2128 Eligible Customers Provided Pursuant to Custom Terms

6.6 Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

6.6.1 Change of Law

AT&T reserves the right to require periodic updates to the terms and conditions of this Agreement, and all relevant documents associated therewith, to maintain alignment with new and changed legislation, legal requirements, rules and regulatory requirements applicable to the products and services offered under this Agreement. If federal or state laws and regulations are changed and/or become effective that may impact the Terms and Conditions related to the products and services offered under this Agreement, the change of law Terms and Conditions shall be implemented through a contract amendment process whereby an authorized representative of the Parties shall execute a formal written amendment. Such Amendment shall be referred to as the "Change of Law Amendment."

Notwithstanding the foregoing, if the Parties cannot reach agreement on the Change of Law Amendment terms within 30 days of the effective date of the applicable law, and such change of law impacts the rates/prices contained in this Agreement, then i) the rates shall be implemented immediately in accordance with such applicable law; or ii) the City may terminate this Agreement in accordance with Section 5.2 above at the end of the then current fiscal year. Such rate changes shall be implemented consistent with E-Rate rules and regulations and applicable procurement laws.

6.7 Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.

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6.8 Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9 Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10 Inspection and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.11 Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12 Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13 Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

6.14 Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

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6.15 Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.16 Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

6.17 Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

6.18 Publicity and Trademarks

Neither party may issue any public statements or announcements relating to the terms of this Agreement or the provision of Services without the prior written consent of the other party. Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

6.19 Tariff and Regulations

This Agreement may be subject to the jurisdiction of the Texas Public Utility Commission ("Commission") and is subject to changes or modifications that the Commission may direct from time to time. Except as otherwise specified under this Agreement, AT&T will, subject to the availability and operational limitations of the necessary systems, facilities, and equipment, provide the Service pursuant to the terms and conditions of the applicable Service Publication(s).

EXHIBIT A

SCOPE OF SERVICES

1. PURPOSE

- 1.1. Contractor shall provide high-speed, fiber optic circuits for the City's Metropolitan Area Network (defined as the network area within Houston city limits, plus surrounding areas where the City provides any services) to connect:
 - a. the City's redundant Core Network sites; and
 - b. the City's Core Network sites to City and Departmental Distribution sites.
- 1.2. Contractor shall also provide the City with a number of lower-speed, fiber optic circuits to serve other network applications, in the event the HITS Director sends Contractor a written request to provide such circuits. The HITS Director has the option to request Contractor to provide up to 60 months of service at over 80 locations. City reserves the right to change locations or reduce the total number of fiber optic circuits it requests, based on the needs and the best interests of the City at the time when the City has to make decisions regarding such circuits.
- 1.3. The above two terms appear to refer to a master contract type of network. This contract is for a specific set of services/locations. Under the proposed contract we are not offering any other rights to offer any other services.

2. DEFINITIONS

- 2.1. SC means Subscriber Connector/Standard Connector
- 2.2. LC means Local Connector/Lucent Connector
- 2.3. GBIC means Gigabit Interface Converters
- 2.4. City means City of Houston Information Technology Services (HITS) or Information Technology Department
- 2.5. TSP means Telecommunications Service Priority
- 2.6. VoIP means Voice-Over Internet Protocol
- 2.7. QoS means Quality of Service
- 2.8. CoS means Cost of Service normally CoS in network terms refers to Class of Service
- 2.9. DC means Data Center
- 2.10. MDF means Main Distribution Frame

3. GENERAL REQUIREMENTS

- 3.1. Contractor warrants that its network proposed by it in response to the City RFP and described in Exhibit A-1 (Contractor's Data Circuit Service Diagram) and its Network Devices with the technical specifications listed in Exhibit A-2 (Contractor's Network Devices and Technical Specifications) support the City's need for low latency, high availability data circuit connections by meeting the minimum technical specifications and design requirements detailed below.
- 3.2. **Circuit Specifications**
 - 3.2.1. Contractor shall provide circuits to the City according to the speeds detailed and requested in the fee schedule, with either fiber or copper

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handoffs. The City requires 1 Gigabit port handoffs for ordered speeds of 100 Megabits to 1 Gigabit, and prefers 1 Gigabit ports for all connections. For speeds lower than 100 Megabits, 100 Megabit ports are acceptable. There is no speed above 10G.

Interface	Handoff	Multi-mode or Single-mode fiber	Bandwidth Usage Limit
10/100 Base T	Copper	N/A	100 Mbps
1000 Base SX	Fiber	Multi-mode	1 Gbps
1000 Base LX/LH	Fiber	Single-mode	1 Gbps

3.2.2. All circuits provided under this Agreement must be registered as TSP circuits with Contractor's assurance that in the event an emergency is declared by the City or the state or federal government, then, Contractor shall assign the highest priority to restoring to service such TSP circuits it supplies to City under this Agreement. It is the responsibility of City of Houston to register such circuits as TSP through the following link: <http://tsp/ncs.gov>

3.2.3. Where City requests, Contractor shall provide multi-point and trunking VLANs over circuit links.

3.3. Essential Service Level Requirements

3.3.1. Contractor shall make all circuits it supplies to City under this Agreement available 99.95% of the time, and shall respond within 4 hours of notification by the City of a circuit or network equipment failure, 24 hours a day, 7 days of the week.

3.3.2. Contractor shall ensure that packet data that the City transmits over the circuits it provides under this Agreement have a maximum latency of 30 milliseconds, a maximum jitter of 20 milliseconds and a maximum packet loss of 0.1%. The existing services applicable include Silver Class of Service which includes the parameters specified in the SLA Measurements chart below.

SLA Measurements	Guaranteed Levels
Network Availability	99.95%
Packet Delivery Rate (PDR)	99.9%
Latency	< 18ms one way
Jitter	< 12 ms

3.3.3. Contractor shall assign the City highest priority appropriate in accordance with AT&T NSEP Guidelines, Federal Response Plan and TSP Regulations, in order to provide connectivity to City public safety data/voice/video whenever the City, the State of Texas or the federal government declares an emergency within the City. It is the responsibility of City of Houston to register any circuits it deems necessary with TSP via <http://tsp/ncs.gov>. Contractor shall not charge the City overages for

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bandwidth utilization during a declared emergency. In consultation with the HITS Director, Contractor and the City will mutually agree to any changes in the technical specifications of circuits which are installed by Contractor under this Agreement. The HITS Director will give Contractor 30 calendar days' written notice to disconnect any circuits, and a minimum of 14 calendar days' notice to activate a circuit (or a mutually agreed upon date if construction is necessary). Contractor shall bill the City for service from the first business day on which service on that circuit is accepted by the HITS Director as set out in Section 3.6 below.

3.3.4. This product offer contains no provisions for providing emergency services to a library, no methods to provide temporary additional services and therefore no conditions pertaining to disconnection. I propose the entire paragraph be struck, it does not appear to be relevant to a library and our HB prices do not allow us to provide additional services without cost.

3.3.5. Contractor warrants that the methodology, design, and technical specifications of the circuits proposed by Contractor in response to the City RFP provide equivalent or superior service to that outlined in the specifications listed in the tables below.

3.4. Traffic Management

3.4.1. Contractor shall allow the City to prioritize certain portions of City data, by running such data before it runs other types of City data, by giving City the right to assign or rank by importance City data traffic, such as, for example, designating Class of Service or Quality of Service levels to inbound and outbound City data, or by giving preference to Voice Over IP communications, as the City generally does under normal circumstances.

3.4.2. The customer may manage its portion of the network as desired. For the OPT-E-MAN service, each Ethernet Virtual Connection may be ordered with a Silver or Bronze Grade of Service, and within that EVC all traffic will have equal priority through the AT&T network.

3.5. 24 x 7 Network Operation Center

3.5.1. Contractor shall operate its Network Operations Center (NOC) 24 hours a day, 7 days of the week and designate such center as its main contact for all problems and service questions from the City. Contractor shall staff its NOC with well-trained, well-qualified and motivated, customer-oriented employees. Contractor shall ensure that its NOC employees are capable of providing immediate customer assistance and have been instructed by Contractor to initiate escalation procedures to notify on-call senior engineers, if needed. Contractor shall ensure that its employees are equipped with monitoring tools to identify problems quickly and to proactively work on a solution that restores network connectivity to City.

3.5.2. Contractor shall monitor all Network Devices it provides to City under this Agreement, 24 hours a day, 7 days of the week.

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3.6. Billing and Acceptance

- 3.6.1. Contractor shall start billing the City for a new data circuit it provides under this Agreement only when the circuit has been successfully tested and accepted in writing within three business days of its installation by the City's designated representative from the City's Information and Technology Department ("Acceptance"). The City considers the installation of a data circuit complete only when Contractor's field service technician has demonstrated to the City by testing the installed circuit and successfully transmitting a digital signal ("pinging") to the AT&T's NTE equipment located on City premises. In the event Contractor's field service technician is unable to demonstrate connectivity by pinging a signal to City equipment located on City premises when a data circuit is installed, then, Contractor's technician will assist the customer with completion of test and turn up.

The above would be non-standard test and turn up conditions, and approval for non-standard procedures would have to be given by the ENOC, Provisioning Area Manager Rebecca Golling. Since this is House Bill 2128, Product does not endorse non-standard procedures being made as part of the contract as they incur extra cost, reduced revenue, neither of which are acceptable under HB2128 prices, and they create a risk of non-parity with other HB customers.. Our standard procedures: Under normal circumstances, the ENOC begins the test and turn-up activity on the Plant Test Date (PTD), normally two business days in advance of the order due date. Following confirmation of associated connections in the provisioning system, the ENOC technician runs a CFM (continuity fault management) test across the VLAN to ensure end-to-end continuity. This test should confirm packet jitter and loss are within service parameters. If there are any difficulties or test deficiencies, AT&T will attempt to resolve those on or before the Due Date.

Following a successful test, the technician will contact the customer network contact to advise the service is available for customer use and to request customer test the circuit and confirm it is working (customer acceptance). The customer should have their equipment in place, powered and ready for use. The customer will be advised that if they encounter perceived service malfunction to contact the ENOC for further testing, otherwise the order will "auto-close" as described below.

After the service has been made available to the customer and the customer has not notified the ENOC of a perceived problem, the order will "auto-close". Service that was turned-over to the customer on or before 3pm will close and complete at 5pm that day. Service turned over to the customer after 3pm will be completed by 10am the next day. After the order has been completed it proceeds to trigger customer billing procedures.

4. CONTRACTOR SPECIFIC REQUIREMENTS

4.1. Contractor's Core Network

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- 4.1.1.** At its core center locations, Contractor must provide the following at its Datacenter:
 - 4.1.1.1.** Redundant connections to Contractor's network router (MAN);
 - 4.1.1.2.** Redundant Power feeds;
 - 4.1.1.3.** Plan for staying current in technology;
 - 4.1.1.4.** Contingency plan for rapid fix of a break on Contractor's network;
 - 4.1.1.5.** Assistance to City with compliance and participation in the federal Homeland Security Department's Disaster Recovery Program; and
 - 4.1.1.6.** A documented Disaster Recovery Plan that can be reviewed by the City's IT Department.

4.2. Data Circuit Service Diagram.

Contractor's High-Level Diagram of its Data Circuit Services within a thirty mile radius of the metropolitan Houston area proposed by it in its response to City RFP is attached and made a part of this Agreement as Exhibit A-1. Additionally, Contractor shall maintain network drawings of the service to the City and kept such drawings up to date, and make them available to the City upon City's request. Contractor shall provide diagrams and drawings to the City with the addition of each new site. Such diagrams and drawings shall include the circuit ID, speed, and port number of the provider premises switch. Drawings shall be submitted to the City regardless of recent changes on January 15 and June 15 of each contract year. This is not provided by OPTEMAN service. If the account team proposes to provide services under this requirement it must be documented in the internal record.

4.3. Redundant Hardware.

- 4.3.1.** Where dual circuits to the same locations are requested, then, Contractor shall provide redundant hardware and diverse routing paths for each circuit terminating at each location requested by the City.
- 4.3.2.** Contractor shall ensure that each Ethernet switch located in Contractor's Central Office has dual power supplies and redundant supervisor engines as well as redundant fiber connections to different main nodes on its fiber ring in order to have a setup that compliments a fault-tolerant and high availability design.

5. SECURITY

- 5.1.** Contractor shall meet or exceed City's security requirements by using highly trained and skilled employees as support staff, network technicians and field personnel to install, monitor or access the network devices provided to City under this Agreement. The Contractor shall also provide high-level information indicating security provisions for the Contractor's network. This information shall substantiate that a comprehensive security plan is in place.

5.2. Device Security

Contractor shall ensure that:

- 5.2.1.** All network devices are configured with only the active ports and services needed and that ports not in use by the City are not a member of any VLAN configuration.
- 5.2.2.** Management access to switches is only possible from an internal management VLAN and that management accounts are TACACS based and frequent password changes occur.
- 5.2.3.** All configurations are stored on a back-up server in the event a network device fails.
- 5.2.4.** All configuration changes are systematically recorded.
- 5.2.5.** AT&T does not apply additional encryption outside the protocol. Encryption of internal routing protocols utilized by City of Houston can traverse the Opt-E-MAN service.
- 5.2.6.** Unauthorized information shall not be injected into the network.

5.3. Physical Security

- 5.3.1.** Contractor must ensure that all core Ethernet Switches are located in secure collocation or locked facilities; and the physical security perimeter has a type of gate, door, or wall that is intended to restrict and control the physical access or egress of personnel. Contractor must use the gate as a means to limit access to authorized persons through measures such as unique keying systems, "smart locks" access card systems, or the use of security personnel. Contractor must have perimeter alarm systems in place to monitor forced intrusion into and surveillance of the location.
- 5.3.2.** Contractor must ensure that fiber routes are kept confidential and are not accessible to third parties.

6. NETWORK MANAGEMENT

- 6.1.** Contractor's support staff must be trained, experienced and qualified network engineers capable of understanding and supporting the City's IT environment. Contractor's network engineering support staff shall proactively support all current and future efforts relating to the monitoring of the City's network so as to identify problems as soon as possible before users of the City's network are affected.
- 6.2.** Contractor must provide corrective and preventive maintenance and must have the capacity to upgrade circuits to facilitate optimum network performance as part of the technical support and maintenance it provides under this Agreement.
- 6.3.** As part of network administration, Contractor must keep track of network resources

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and must have a clear picture of where it has assigned such resources by location.

7. SECURITY MANAGEMENT

- 7.1. Contractor assist the City's Information Technology Department, which is charged with IT Security Management for the City in general, maintain the security of such data by using industry best practices to enable the City to comply with regulatory agency requirements, including but not limited to CJIS (law enforcement), and federal privacy requirements of health related data under HIPAA. My product attorney would not approve any statement regarding AT&T "ensuring the security of City data" as such is expressly excluded.

8. RESPONSE TIME

- 8.1. Contractor must be accessible to the City by telephone during normal business hours, defined as Monday through Friday, 7:00 A.M. to 6:00 P.M., Central Time. Contractor must be ready to start work on any circuit within two hours of receiving a call for service from the City's designated representative from its Information and Technology Department. While our MTTR of 4 hours would suggest that work to repair begin within 2 hours, we do not have any existing SLO related to a time to start working a project.
 - 8.1.1 Contractor must be available and accessible to the City by telephone to work overtime if requested by the City's designated representative from its Information Technology Department. Technician tasks and scheduling will be arranged as mutually agreed to accommodate the City of Houston's Contractor needs. In the event of an emergency situation, AT&T will respond immediately as appropriate and without regard to overtime conditions. Overtime in non-emergency situations will need to be coordinated with AT&T management.
- 8.2. Contractor must be available and accessible to the City by telephone to work on an emergency basis, if requested by the City's designated representative from its Information Technology Department.
- 8.3. Contractor shall start an emergency job immediately without scheduling delays, and shall not restrict such emergency jobs to normal working hours. The HITS Director will coordinate emergency and overtime work with Contractor through the City's designated representative from its Information Technology Department.

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**EXHIBIT A-2
Contractor's Network Devices and Technical Specifications**

EXHIBIT B

FEE SCHEDULE

1. **Pricing.** Contractor's pricing shall include the following:
 - a. Total monthly cost (flat rate) of each circuit at the minimum standard bandwidth, as stated in this Fee Schedule.
 - b. Contractor shall provide the number of days required to establish service, and to have services available for City usage.
 - c. Costs in the Fee Schedule should represent the total monthly recurring charge for the link--including port costs, speed, and any other monthly costs associated with the monthly recurring charge.

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Sites A	"Z" location	Current Speed at Site	Monthly Connection Fee	Install Costs
HPL/HALAN IT SITES				
10103 Fondren	500 Mckinney	10-100	\$220.00	n/a
1050 Quitman	500 Mckinney	50-100	\$139.00	n/a
10677 Homestead Rd	500 Mckinney	10-100	\$291.00	n/a
110 N. Milby	500 Mckinney	10-100	\$216.00	n/a
1300 Victor St.	500 Mckinney	10-100	\$119.00	n/a
1302 Heights Blvd	500 Mckinney	10-100	\$183.00	n/a
1349 West 43rd St	500 Mckinney	10-100	\$270.00	n/a
1500 McKinney	500 Mckinney	10-100	\$169.00	n/a
1520 Gellhorn	500 Mckinney	10-100	\$259.00	n/a
2436 Gessner	500 Mckinney	10-100	\$206.00	n/a
2510 Willowick	500 Mckinney	10-100	\$104.00	n/a
3223 Wilcrest	500 Mckinney	10-100	\$147.00	n/a
3517 Reed Rd	500 Mckinney	10-100	\$295.00	n/a
3624 Scott St.	500 Mckinney	10-100	\$265.00	n/a
3810 West Fuqua	500 Mckinney	10-100	\$293.00	n/a
4014 Market	500 Mckinney	10-100	\$193.00	n/a
4100 Montrose	500 Mckinney	10-100	\$158.00	n/a
5005 West Bellfort	500 Mckinney	10-100	\$252.00	n/a
5260 Griggs	500 Mckinney	10-100	\$264.00	n/a
5300 Caroline	500 Mckinney	10-100	\$173.00	n/a
5411 Pardee St	500 Mckinney	10-100	\$263.00	n/a
5830 Westheimer	500 Mckinney	10-100	\$147.00	n/a
609 N. Eldridge	500 Mckinney	10-100	\$216.00	n/a
6200 Pinemont	500 Mckinney	10-100	\$268.00	n/a
6400 High Star	500 Mckinney	10-100	\$201.00	n/a
6767 Bellfort	500 Mckinney	10-100	\$262.00	n/a
7007 W. Fuqua	500 Mckinney	10-100	\$314.00	n/a
702 Kress	500 Mckinney	10-100	\$249.00	n/a
7200 Keller	500 Mckinney	10-100	\$251.00	n/a
7405 Stella Link	500 Mckinney	50-100	\$222.00	n/a
7660 Clarewood	500 Mckinney	10-100	\$195.00	n/a
611 Sgt. Marcario Garcia Drive	500 Mckinney	10-100	\$225.00	n/a

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Sites A	"Z" location	Current Speed at Site	Monthly Connection Fee	Install Costs
HPL/HALAN IT SITES				
7979 S. Kirkwood	500 Mckinney	10-100	\$248.00	n/a
8002 Hirsch	500 Mckinney	10-100	\$256.00	n/a
8145 Park Place	500 Mckinney	10-100	\$268.00	n/a
8501 W. Montgomery	500 Mckinney	10-100	\$257.00	n/a
8815 Feland St	500 Mckinney	10-100	\$260.00	n/a
8835 Long Point	500 Mckinney	10-100	\$184.00	n/a
9002 Kingspoint	500 Mckinney	10-100	\$281.00	n/a
9525 Irvington	500 Mckinney	10-100	\$140.00	n/a
1201 Jeff Ginn Memorial Drive Pasadena	500 Mckinney	50-100	\$281.00	n/a
4330 Fairmont Pkwy Pasadena	500 Mckinney	10-100	\$157.00	n/a
5111 Jessmine Bellaire	500 Mckinney/Multipoint-COH cloud	10-100	\$228.00	n/a
500 Mckinney	Multipoint -COH cloud	1 Gig	\$82.00	n/a

For Future Ethernet Pricing request:

All Library rates are based under SB773 (previous HouseBill2128) and in order for AT&T to provide rates we would need exact and Z locations, rates are based 10% above cost.



E-rate Rider

ATTACHMENT TO ILEC Intrastate Tariff Network Services Pricing Schedule ("Agreement") FOR SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING

This Attachment ("Attachment"), entered into by AT&T Corp. ("AT&T") and City of Houston ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to the Agreement. This Attachment shall have the same term as the Agreement. If there are any inconsistencies between the Agreement and this Attachment with respect to the Service for which E-rate funding is sought, the terms and conditions of this Attachment shall control.

TERMS AND CONDITIONS APPLICABLE TO E-RATE FUNDED PRODUCTS AND SERVICES

Customer may seek funding through the Federal Universal Service Fund program known as "E-Rate" for some or all of the Services or Service Components purchased under the Agreement. E-Rate is administered by the Schools and Libraries Division ("SLD") of the Universal Service Fund Administrative Company ("USAC") (Sometimes collectively or individually referred to herein as "USAC/SLD"). The Federal Communications Commission ("FCC") has promulgated regulations that govern the participation in the E-Rate program. Both Parties agree to adhere to FCC regulations as well as the rules established by SLD and USAC regarding participation in the E-Rate program. The Parties further agree:

1. Reimbursement of USAC/SLD. If USAC/SLD seeks reimbursement from AT&T of E-Rate funds as a result of Customer's failure to comply with the E-Rate rules or regulations, including Customer delays in submitting required forms or contracts; or, if USAC/SLD determines that Services which it had previously approved for discounts are not eligible and funds must be returned (a "ComAd") (other than as the result of AT&T's failure to comply with the E-Rate requirements), then Customer shall reimburse AT&T for any such funds AT&T must return to USAC/SLD within ninety (90) days of notice from USAC/SLD seeking reimbursement. In addition, Customer agrees and acknowledges that a determination of ineligibility does not affect the obligations set forth in the Agreement, including those obligations related to payments and early termination fees.
2. Eligibility of Products and Services. The eligibility or ineligibility of products or services for E-Rate funding is solely the responsibility of the USAC/SLD and/or the FCC. AT&T makes no representations or warranties regarding such eligibility.
3. Service Substitutions. Customer acknowledges that USAC/SLD funding commitments are based upon the products, services and locations set forth in the Form 471 and that any modification to the products and services and/or the locations at which the products or services are to be installed and/or provided, requires Customer to file a service substitution with USAC/SLD, seeking permission to receive alternative service or receive the service to an alternative location. If Customer intends to make any such service substitutions, then Customer agrees to pursue them, and file any and all requisite documentation, diligently. AT&T will provide Services and Service Components only as approved by the SLD and may suspend activities pending approval of service substitution requests.
4. Requested Information. If requested, Customer will promptly provide AT&T with final copies of the following E-Rate-related materials (including all attachments) prepared by or for Customer: (i) Form 471 and Item 21 Attachment; if appropriate, (ii) Form 486; (iii) Form 500; (iv) Service Substitution Request; (v) Service Certification Form; and, (vi) Form 472-BEAR. If the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.
5. Representations, Warranties and Indemnities. Each Party represents and warrants that it has and will comply with all laws and the requirements applicable to the E-Rate Program. In addition to any indemnification obligations set forth in the Agreement and to the extent permitted by law, each Party agrees to indemnify and hold harmless the other Party (its employees, officers, directors and agents, and its parents and affiliates under common control) from and against all third party claims (including FCC or USAC/SLD claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Attachment.

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*This agreement is for use by the authorized employees of the parties hereto only
and is not for general distribution within or outside the companies.*



E-rate Rider

6. Non-Appropriations. By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Agreement Term. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under this Attachment, Customer may terminate the Services without liability for the termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith with AT&T to develop revised terms, an alternative payment schedule or a new agreement to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Attachment, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

Customer Must Choose A or B

A.) ☒ [OPTION "A" IS AVAILABLE FOR NEW OR EXISTING SERVICES]

CUSTOMER DIRECTS AT&T TO COMMENCE OR CONTINUE SERVICES EVEN IF FUNDING COMMITMENT DECISION LETTER ("FCDL") HAS NOT BEEN RECEIVED FROM USAC/SLD. CUSTOMER ACKNOWLEDGES ITS OBLIGATION TO PAY FOR THE SERVICE IF FUNDING IS DENIED OR USAC/SLD COMMITMENT IS NOT RECEIVED.

1. Scope: Customer desires that Services commence on or about insert date. Customer intends to seek funding from the USAC/SLD, but acknowledges that it may not receive an FCDL prior to this date and that it is possible that USAC/SLD may not approve funding or may delay its decision.

2. Funding Denial Agreement Termination: CUSTOMER ACKNOWLEDGES THAT THERE IS NO RIGHT TO TERMINATE THE SERVICES OR SERVICE COMPONENTS MADE THE BASIS OF THIS ATTACHMENT IF E-RATE FUNDING IS DELAYED OR DENIED.

Customer should refer to the E-Rate Rules and Regulations regarding USAC/SLD payments for eligible services delivered after the beginning of the E-Rate year (July 1st) but before receipt of an FCDL.

B.) ☐ [OPTION "B" IS APPROPRIATE FOR NEW SERVICES]

SERVICES WILL NOT COMMENCE AND/OR EQUIPMENT WILL NOT SHIP UNTIL AT&T RECEIVES NOTIFICATION THAT E-RATE FUNDS HAVE BEEN COMMITTED; IF E-RATE FUNDING FOR SERVICES AND/OR EQUIPMENT IS DENIED, AGREEMENT WILL TERMINATE AS TO THOSE SERVICES AND/OR EQUIPMENT UNLESS AND UNTIL A NEW ATTACHMENT (REPLACING THIS ATTACHMENT) IS EXECUTED.

1. Scope: Customer agrees to use best efforts to obtain funding from the USAC/SLD AT&T will not begin work related to the Services and/or equipment (including, without limitation, construction, installation or activation activities) until after AT&T receives Customer notification to proceed with the order, and verification of funding approval, and, for Internal Connections (IC), a verification of Form 486 approval by the USAC/SLD. AT&T will commence Service(s) as soon as is practical following the receipt of the appropriate documentation.

2. Funding Denial Agreement Termination: If a funding request is denied by the USAC/SLD, the Agreement, with respect to such Service(s) and/or equipment, shall terminate sixty (60) days from the date of the FCDL in which E-Rate funding is denied or on the 30th day following the final appeal of such denial, and Customer will not incur termination liability. In the event Services and/or equipment are to be provided pursuant to a multi-year arrangement (whether by contract or tariff), this termination right applies only to the first year of the multi-year agreement.

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E-rate Rider

3. IF CUSTOMER WISHES TO CHANGE ITS SELECTION AND WISHES AT&T TO COMMENCE SERVICES REGARDLESS OF FUNDING COMMITMENT FROM THE USAC/SLD, CUSTOMER WILL EXECUTE A NEW (REPLACEMENT) ATTACHMENT, AND AGREE TO THE TERMS SET FORTH IN "A" ABOVE. Upon execution of the Replacement Attachment, the Parties will mutually agree upon a Service Commencement Date.

This provision does not apply to Services that were initially approved for funding and subsequently deemed ineligible by USAC/SLD after commencement of Service

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E-rate Rider

Customer acknowledges its obligation to designate the method by which it will receive E-Rate discounts. With respect to each discount method, Customer agrees as follows:

Billed Entity Application Reimbursement ("BEAR") – Form 472:

Customer agrees to submit to AT&T complete and accurate BEAR – Form 472 requests for certification at least five (5) business days prior to the FCC Invoice Deadline date for the Funding Request Number(s) ("FRN") being submitted on that Form 472. AT&T cannot ensure that the Form 472 will be reviewed prior to the deadline if not received at least five (5) business days prior. Upon receipt of USAC/SLD check in the amount of the certified Form 472, AT&T will remit payment to Customer within twenty (20) business days after receipt of payment from USAC/SLD. It is solely Customer's responsibility to ensure the accuracy of this submission and the amounts sought to be recovered through the E-Rate program.



Service Provider Invoice form - ("SPI") – Form 474:

After AT&T has received notification of approved funding, an approved Form 486, and Customer has confirmed the appropriate Billed Accounts to be discounted per Funding Request Number, AT&T will then provide E-rate program discounts and will file a Form 474 SPI. Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support requests for payment of Services rendered. In the event SLD denies payment, Customer will be responsible for repayment of all funds provided to Customer by AT&T associated with this process.

FCC RULES REQUIRE THAT PRIOR TO SUBMISSION OF A FORM 471 APPLICATION FOR FUNDING THE PARTIES MUST HAVE ENTERED INTO A BINDING CONTRACT FOR THE SERVICES MADE THE SUBJECT OF THE APPLICATION. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT STATE LAW REQUIREMENTS FOR A BINDING CONTRACT HAVE BEEN MET PRIOR TO THE SUBMISSION OF A FORM 471.

☐ THIS ATTACHMENT REPLACES THE E-RATE RIDER ATTACHMENT BETWEEN THE PARTIES DATED <Date of Original e-Rate Rider Attachment>.

SO AGREED by the Parties' respective authorized signatories:

City of Houston	AT&T Corp. ("AT&T")
Customer Signature: 	AT&T Signature: 
Print Name: RONALD STAUR	Print Name: GABRIELA RATULOWSKI
Title: Asst. Director IT	Title: Contract Management
Date: 3-12-2013	Date: 3/8/2013

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